

# A very short introduction to Frontex— unravelling the trajectory of one of the EU's key actors

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We have gotten used to a European Union without borders—without internal borders. The memory of long waiting queues and passport controls at border crossing points is fading while we enjoy freely moving around between European nations. For a continent plagued for centuries by bloody wars over territory and boundaries, this is a remarkable development. The gradual abolition of checks at internal borders in Europe was an incremental process that started in the 1990s with the creation of the [Schengen area](#). In 1997, the [Treaty of Amsterdam](#) incorporated the Schengen acquis into the EU framework. And ten years later, in 2007, the Lisbon Treaty elevated the existence of the area of freedom, security and justice without internal frontiers to one of the core aims of the Union ([Article 3\(2\) TEU](#)).

As the EU territory has in the absence of internal frontiers become a vast space allowing for the unimpeded movement of people, the focus of both border management and the fight against cross-border criminality has progressively shifted to the geographic periphery of the EU. This is where Frontex enters the stage. The increasing role of the EU agency in charge of external border control in the aftermath of the significant migratory increase of 2015 has stirred lively discussions on the appropriate level of powers and responsibilities conferred to Frontex. As [the agency's mandate was once more reinforced and expanded at the end of 2019](#), this topical symposium sets out to address some of the most pressing questions raised by the expanding remit of Frontex. This first contribution to the symposium briefly outlines the genesis, development, and status quo of the agency, while the ensuing analyses will zoom in on specific politico-legal matters that are at the core of the current debate.

## Frontex and the shift of border control to the periphery of Europe

For many years, Member States showed little enthusiasm to share their prerogative of controlling who enters and leaves their territory—considered a fundamental act of sovereignty—with an EU structure. National governments agreed on common rules governing external border control (i.e. the [Schengen Borders Code](#)), but preferred a decentralized and informal implementation mode based, for instance, on a network of national contact points. However, this decentralized approach proved ineffective. In view of the enlargement to the Eastern neighbourhood in the mid-2000s, national governments eventually overcame their reluctance and agreed to partly Europeanize

the management of external borders by creating a permanent EU structure tasked to coordinate the implementation of the common rules.

In October 2004, [Council Regulation \(EC\) 2007/2004](#) established the European Agency for the Management of Operational Cooperation at the External Borders—better known under its French acronym Frontex. The Warsaw-based agency was set up to complement (not to replace) the efforts of national authorities, primarily by providing coordination of the implementation of Schengen acquis, in particular the Schengen Borders Code. According to an intergovernmental institutional blueprint, Member States thus retain the primary responsibility for checking their section of the external border.

Two years after Frontex had become operational, its mandate was altered for the first time. The so-called [RABIT Regulation of 2007](#) added operational tasks to the agency's portfolio: It allowed Frontex to temporarily deploy Rapid Border Intervention Teams (RABIT) to Member States facing an exceptional upsurge in illegal border crossings. Another enhancement of operational capacities occurred in [2011](#) when Frontex was enabled to set up European Border Guard Teams which could take part in joint operations alongside national contingents.

## **And the institutional winner of the migratory crisis is...**

In the wake of the migration inflow, the legal framework of Frontex underwent a complete overhaul. The [new legal basis of 2016](#) significantly expanded the operational powers of the agency that was renamed into European Border and Coast Guard Agency (while keeping its Frontex acronym). The rebranding was not merely a play on words but made apparent a substantial change: Frontex had outgrown its support role and had incontestably turned into a player in its own right that fulfils [a regulatory, supervisory, and operational role](#).

In the course of several mandate revisions, each of which conferred more powers to Frontex, the agency's original coordination, training, and assistance mandate has been replaced by a far more comprehensive and operational job description. While the initial mandate counted only six tasks, the current Regulation lists more than thirty. Among those more recent functions are a range of executive tasks, including (joint) return as well as search and rescue operations. What is more, data analysis and exchange has become a central part of the agency's remit. As Frontex is in charge of monitoring migratory flows, assessing risks, signalling potential new threats, and assessing potential vulnerabilities of the EU's external border, it is at the pulse of managing and planning EU border and migration management. Unsurprisingly, then, Frontex has turned into a key hub of information and expertise, which in turn makes the agency a [valuable reference point](#) when it comes to fostering integrated border management as stipulated in [Article 77 TFEU](#).

This trend was reinforced by the most recent [mandate amendment of 2019](#) that again bolstered the competences and expanded the tasks of Frontex despite persisting sovereignty concerns of Member States. Importantly, the agency's powers

related to the organization, coordination, and conduct of return operations of irregular migrants were strengthened. Furthermore, the latest reform entails a [major increase in the agency's human resources and financial means](#): The budget of Frontex is planned to triple to reach an annual sum of € 1.3 billion (2021–2027) and its standing corps (including Member State forces) is supposed to rise to a capacity of 10.000 operational staff by 2027, roughly one third of which the agency can recruit itself whereas the biggest share of its personnel will remain seconded officers.

However, the expansion of Frontex does not stop here. Next to the considerable growth of the agency's remit, budget, and staff, we witness a significant geographic enlargement of the reach of its activities. In the past, this geographic expansion was based on a patchwork of mostly informal arrangements. However, both post-migratory crisis mandate revisions strengthened the legal basis for the extension of the theatre of operations. In addition to exercising executive functions in States bordering directly on the EU (as foreseen by the 2016 mandate), executive missions are henceforth also authorized in third countries that do *not* directly share a border with a Member State provided there is a status agreement. In the same vein, the agency can open (temporary) antenna offices in third countries to ensure the coordination and logistics needed for its operational activities. In other words, Frontex is no longer confined to operate at the external land and sea borders of the EU or in the closer neighbourhood, but can extensively project its intelligence and law enforcement activities into the [pre-frontier area](#). Judging by the current activities of Frontex, the EU's pre-border area is immense: It includes the entire Western Balkan region, stretches to the South Caucasus, comprises big parts of Northern Africa and even extends to the Sahel region.

## **A rising star causing many politico-legal controversies**

This expansionist institutional, operational, and geographic trajectory of Frontex goes, obviously, no longer unnoticed. The considerably increased role of the agency, in particular as a response to the unprecedented migratory pressure of 2015, generates discontentment and breeds criticism. Indicative hereof is the growing number of (quasi-) judicial proceedings involving the agency at the EU level. The European Ombudsman, for instance, has recently dealt with several complaints lodged against Frontex: Next to questions of fundamental rights violations (see, for instance, the [own-initiative inquiry on joint return operations](#)), the unsatisfactory handling of access to information requests constitutes a central theme of grievances (as [this decision illustrates](#)). Transparency has also been a topic for the EU's judicature: Only some weeks ago, the General Court delivered a relatively deferential decision [in a case concerning access to documents relating to maritime operations](#) carried out by the agency in the Central Mediterranean.

There are indeed many political debates and legal controversies about Frontex and the way in which the agency, together with the Member States, engages in external border management and control. Without putting into question the voiced criticism, which mainly circles around too much unchecked power, it is fair to note

that Frontex continues to act alongside national authorities that retain the primary responsibility for the control of their external borders and that exercise command and control. The agency does thus not have the means or mandate to act independently or without the authorization of the respective Member State. This said, the agency's [accountability scheme for human rights violations](#) remains a bone of contention, in particular when Frontex exercises executive functions in [third countries](#) or in [EU hotspots and in the context of return operations](#).

The significant expansion of the agency's remit during the last years raises a range of questions, many of which will be addressed by the contributions to this symposium. Next to the pressing issue of responsibility and liability for potential human rights violations, the blogposts will deal with the tendency to move from preventive to more repressive tasks, which in turn relates to the massive expansion of data collection and analysis by Frontex. The discussion will equally cover the extra-territorialization of border management in the Western Balkans and the progressive use of pre-emptive border and migration control in Africa with a view to establishing a 'buffer zone' to migration from the Global South.

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